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IN THE

# Supreme Court of the United States

October Term, 1958

No. 367

TONY VOCI,
*Petitioner*

vs.

COMMONWEALTH OF PENNSYLVANIA,
*Respondent*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Tony Voci,
*In Propria Persona*

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No.

Tony Voci,

*Petitioner*

v.

Commonwealth of Pennsylvania,

*Respondent*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania affirming the judgment of the Superior Court of Pennsylvania which affirmed the judgment of the Court of Quarter Sessions of Lancaster County, Pennsylvania.

## OPINIONS BELOW

The majority and dissenting opinions in the Supreme Court of Pennsylvania are reported at 393 Pa. 404, 143 Atl. (2nd) 652, and are appended hereto. The opinion of the Superior Court of Pennsylvania is reported at 185 Pa. Superior Ct. 563, 138 Atl. (2nd) 232, and is appended hereto. The opinion of the Court of Quarter Sessions of Lancaster County, Pennsylvania is unreported and is included in the Record as printed for the Court below, nine copies of which have been filed herewith.

## JURISDICTION

The final judgment of the Supreme Court of Pennsylvania affirming the judgment of the Superior Court of Pennsylvania was entered July 1, 1958. The final order of the Superior Court of Pennsylvania, which affirmed the judgment of the Court below, was entered on January 21, 1958.

The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1257.

## QUESTIONS PRESENTED

1. Where the only evidence upon which a conviction is based, is that of a state official, who testifies in a state court, without the consent of the sender, to the contents of telephone conversations, which he intercepted by means of a wire tap, should such conviction stand?

2. Where the alleged criminal acts were committed by the sender and there was no proof that the sender was in the State wherein the calls were received at the time the calls were made, does the court of that State wherein the calls were received have jurisdiction over the sender in a criminal case?

## STATUTORY PROVISIONS INVOLVED

Section 605 of the Federal Communications Act of June 19, 1934, c. 652, 48 Stat. 1103 (47 U. S. C. A. 605), provides in pertinent part as follows:

> ". . . and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; . . ."

Section 501 of the said Federal Communications Act, 68 Stat. 30 (47 U. S. C. A. 501), provides in pertinent part:

> "Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this chapter prohibited or declared to be unlawful . . . shall, upon conviction thereof, be punished for such offense . . . by a fine of not more than $10,000 or by imprisonment for a term not exceeding one year, or both, . . ."

## STATEMENT OF THE CASE

Petitioner was indicted, tried and convicted in the Court of Quarter Sessions of Lancaster County, Pennsylvania, on a charge of bookmaking, for which he was sentenced to imprisonment and fined (Record 97a).

*Reasons for Granting the Writ*

The only evidence adduced by the Commonwealth in support of the bookmaking charge consisted of certain telephone conversations between petitioner and others, which were intercepted by means of a wire tap placed on a telephone wire by a Lancaster police officer (Record 89a). This police officer was permitted to testify to the overheard conversations over petitioner's objections, one of which was that such testimony violated the Federal Communications Act of 1934 (Record 17a).

The location of Petitioner when he made the telephone calls was unknown (Record 43a). Petitioner demurred to the evidence and submitted a point for binding instructions on this among other grounds (Record 71a-72a, 83a).

On appeal the Superior Court of Pennsylvania affirmed the judgment of the Court below (p. 7), and upon certiorari, the Supreme Court of Pennsylvania (one judge dissenting) affirmed the order of the Superior Court (p. 13).

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## REASONS FOR GRANTING THE WRIT

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1. *The issues are substantial.*

(a) The Supreme Court of Pennsylvania affirmed the conviction of Petitioner in reliance on *Schwartz v. Texas*, 344 U. S. 199, 73 S. Ct. 232, 97 L. Ed. 231. This Court, in *Benanti v. United States*, 355 U. S. 96, 78 S. Ct. 155, 2 L. Ed. 2d 126, declared that the rationale of *Schwartz v. Texas* (supra) was "that despite the plain prohibition of Sec. 605, due regard to federal state relations precluded the conclusion that Congress intended to thwart a state

rule of evidence in the absence of a clear indication to that effect." It is Petitioner's contention that since Congress prohibited state agents from violating the prohibitions of Sec. 605 and since Congress did not intend to allow state legislation which would contradict Sec. 605, *Benanti v. U. S.* (supra), that Congress did not intend to allow a state to deprive a person of his liberty in a criminal case, where the *only* evidence was that secured in violation of the prohibitions of Section 605. In such a situation, Congress surely did not intend that a state rule of evidence should be permitted to thwart the will of Congress. With all due regard to federal state relations, there is a point reached, where such regard must give way to a more basic principle, namely, the supremacy of Congress. It would be mockery of the power of Congress if a conviction, based *solely* on a violation of a Congressional statute was permitted to stand.

(b) Although both the Pennsylvania Supreme Court and the Pennsylvania Superior Court held that venue was proved, there is not the slightest evidence in the record that Petitioner was within the jurisdiction of Pennsylvania when he made the telephone calls which were overheard and divulged. This Court is not bound by such a determination of jurisdiction. Petitioner contends that it is incumbent upon a state to show that a defendant, when he made telephone calls which were divulged and which are the basis of a conviction, was within the jurisdiction of the state when he made the calls.

Respectfully submitted,

TONY VOCI,

*In Propria Persona.*

## APPENDIX A

### OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA

### IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 249 October Term, 1957

Commonwealth of Pennsylvania

v.

Tony Voci,

Appellant

Appeal from the Judgment of the Court of Quarter Sessions of Lancaster County at June Sessions 1954, No. 161.

Opinion by Wright, J. Filed: January 21, 1958

Tony Voci was indicted in Lancaster County on a charge of pool selling and book making, as proscribed by section 607 of the Act of 1939, P. L. 872, 18 P.S. 4607. At the trial he demurred to the evidence, and submitted a point for binding instructions. After a verdict of guilty, he filed motions for a new trial and in arrest of judgment. The lower court refused to grant these motions, and imposed sentence. Voci has appealed. The facts are set

forth in the following excerpt from the opinion of Judge Johnstone for the court below:

> "Detective Farkas testified that he made a tap on the telephone wire of the P. & J. Cafe and recorded the conversations heard on that line on a tape recording machine. One earphone the detective held to his ear and at the same time made notes of the conversations he overheard. The other earphone was attached to the speaker of the recording machine and the same conversations the detective heard were recorded by the machine on a wire tape. This was done on each of three successive days from 12:30 p.m. until approximately 4:00 p.m. After each of the three listening sessions, the officer immediately went to the Police Station and, with Officer Thompson doing the typing, made a transcript of the tape recording. Detective Farkas testified that he played and replayed the recording until he was satisfied he had an accurate verbatim transcript of the conversations recorded on the tape. During the giving of his testimony concerning the taking of race horse bets by the defendant, the officer had with him and occasionally referred to the notes he had made in his own handwriting during the intercepted telephone conversations. However, the greater portion of the officer's testimony about the actual bets was read into the record directly from the transcript of the wire recording. The officer stated that he knew the defendant, and although he had never talked to the defendant over the telephone, was positive in his identification of the defendant's voice. Two other police officers, who listened to the tape recording but did not listen to the wire tap, also positively

identified the voice of the person accepting bets as that of the defendant. No testimony was offered by or on behalf of the defendant and apparently the jury believed the officers' testimony not only concerning the taking of race bets but the identification of the defendant as the person who took them".

Appellant's distinguished counsel advances six contentions, the first of which is that "wire tapping is an impairment of an individual's right of privacy so that testimony based thereon is inadmissible". It is of course true that the right of privacy is recognized in this Commonwealth. See *Hull v. Curtis Publishing Co.*, 182 Pa. Superior Ct. 86, 125 A. 2d 644; *Mack Appeal*, 386 Pa. 251, 128 A. 2d 679. However, as in the case of *Commonwealth v. Chaitt*, 380 Pa. 532, 112 A. 2d 379, we are not here concerned with the policy question whether the need for wire tapping is out-weighed by its impairment of the right of privacy. A person engaged in the commission of a crime has no legal right of privacy. Appellant's contention must be rejected upon the authority of the *Chaitt* case.

Appellant's second contention is that "an unauthorized publication of the contents of a telephone conversation, even though admissible into evidence under state law, violates section 605 of the Communications Act of 1934". This contention is also answered by the opinion in *Commonwealth v. Chaitt*, supra, 380 Pa. 532, 112 A. 2d 379, wherein Mr. Chief Justice Stern states that the statute in question "was not intended to, and does not, relate to the divulging of the contents of intercepted communication by state agents testifying in the criminal prosecution of a state crime in a state court". See also *Swartz v. Texas*, 344 U. S. 199, 73 S. Ct. 232.

Appellant's third contention is that "all testimony from the typewritten transcription should be stricken from the record". It is well settled that a witness may refresh his memory by an examination of reasonably contemporaneous memoranda, whether made by the witness or another: *Commonwealth v. Roth*, 71 Pa. Superior Ct. 71. In the case at bar the transcript in question was made immediately after each day's recording. While the officer made reference to this transcript, he was actually testifying to what he had himself heard. As pointed out by the court below, the recording itself, having been admitted, was available to appellant if he desired to controvert the officer's testimony. Somewhat similar testimony was approved in *Edwards v. Gimbel*, 202 Pa. 30, 51 A. 357. See also *Commonwealth v. Dwyer*, 79 Pa. Superior Ct. 485; *Commonwealth v. Perri*, 97 Pa. Superior Ct. 78; *Lardieri v. Lamont*, 172 Pa. Superior Ct. 35, 92 A. 2d 229; *Commonwealth v. Smith*, 178 Pa. Superior Ct. 281, 115 A. 2d 782; *Nestor vs. George*, 354 Pa. 19, 46 A. 2d 469. We do not perceive that the case of *Hunter vs. Hunter*, 169 Pa. Superior Ct. 498, 83 A. 2d 401, cited by appellant, supports his contention.

Appellant's fourth contention is that "testimony elicited by leading questions of the district attorney should have been stricken from the record". While appellant did not immediately object, he subsequently did move, while the witness was still on the stand, that the testimony be stricken. See *Commonwealth v. Woloszchuk*, 133 Pa. Superior Ct. 470, 3 A. 2d 10; *Commonwealth v. Truitt*, 169 Pa. Superior Ct. 326, 82 A. 2d 699. However, our examination of the record fails to reveal that appellant was prejudiced in any way by the questioning of the district attorney. The

rule that a party calling a witness is not permitted to ask leading questions is liberally construed in modern practice: *Commonwealth v. Reeves*, 267 Pa. 361, 110 A. 158. It was proper for the district attorney to ask questions tending to lead the mind of the witness to the subject of inquiry: *Commonwealth v. Rossi*, 47 Pa. Superior Ct. 297. The scope and use of leading questions must be largely entrusted to the discretion of the trial judge: *Commonwealth v. Miele*, 115 Pa. Superior Ct. 269, 175 A. 706; *Stompler v. Richman*, 125 Pa. Superior Ct. 385, 189 A. 730.

Appellant's fifth contention is that "the evidence in this case was of insufficient nature and quality" to support the conviction. The case of *Commonwealth v. Gabriel*, 130 Pa. Superior Ct. 191, 196 A. 866, which he cites, has no application in the present factual situation. Incidentally, in the *Gabriel* case the conviction was sustained. What the officer heard in the case at bar was the actual commission of the crime charged. In *Commonwealth v. Moore*, 180 Pa. Superior Ct. 538, 118 A. 2d 212, we held that the telephone conversations there under consideration were direct evidence. See also *Commonwealth v. Kutler*, 173 Pa. Superior Ct. 153, 96 A. 2d 160.

Appellant's final contention is that the Commonwealth "failed to meet an essential burden" in that "there was not the slightest evidence of the locus of the alleged crime." It should be noted that this contention, namely, that venue was not proved, was first raised in the additional reasons for a new trial, which were filed over five months after the verdict. In any event, we agree with the court below that the record clearly discloses that the offense was committed in Lancaster County. Appellant cites *Commonwealth v. Tarsnane*, 170 Pa. Superior Ct. 265, 85 A. 2d 606, for the

proposition that the locus of a crime is always in issue. However, in the words of Judge Hirt in the *Tarsnane* case, "although some evidence of the locality of the crime should be adduced yet if the place of its commission is not disputed, the defect is cured by verdict of guilty". *Commonwealth v. Kaiser*, 184 Pa. 493, 39 A. 299, and *Commonwealth v. Mull*, 316 Pa. 424, 175 A. 418, also cited, are not here controlling. In the *Kaiser* case it was held that, while the locality of the crime is technically at issue and some evidence of it should be adduced, if the question is not disputed the trial judge need not specifically call the matter to the attention of the jury. In the *Mull* case, wherein a real issue was raised as to venue, although the evidence was sufficient to support a finding that the crime was committed within the jurisdiction, the conviction was reversed because the trial judge refused an express request to charge on the question. In the case at bar the indictment charges that the crime was committed "at the county aforesaid and within the jurisdiction of this court". We deem it appropriate to quote from the opinion of Mr. Justice (later Chief Justice) Kephart in *Commonwealth v. Lawrence*, 282 Pa. 128, 127 A. 465, as follows: "In the absence of uncontradicted evidence to the contrary, the conviction is conclusive the crime was committed where it was charged to have been done in the indictment, for the verdict includes such a finding". See also *Commonwealth v. Sloat*, 298 Pa. 10, 147 A. 834.

The judgment is affirmed, and it is ordered that appellant appear in the court below at such time as he may be there called, and that he be by that court committed until he has complied with his sentence or any part thereof which had not been performed at the time the order of supersedeas was entered.

## APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

No. 242 January Term, 1958

Commonwealth of Pennsylvania

v.

Tony Voci,
Appellant

Appeal from the Judgment of the Superior Court of Pennsylvania at No. 242 October Term, 1957, affirming the Sentence of the Court of Oyer and Terminer and Quarter Sessions of the Peace for the County of Lancaster, June Sessions, 1954, No. 161.

Entered January 21, 1958.

### OPINION

Jones, B. R., J. Filed: July 1, 1958

The defendant was convicted in the Court of Quarter Sessions of Lancaster County upon an indictment charging him with pool selling and book making in violation of

the Act of June 24, 1939, P. L. 872, Section 607, 18 PS Section 4607.* After the verdict of guilty, defendant filed motions for a new trial and in arrest of judgment. Following the trial court's refusal of these motions and the imposition of sentence, defendant appealed to the Superior Court where the judgment was affirmed (185 Pa. Superior Ct. 563, 138 A. 2d 232). From that affirmance we allowed the present appeal.

Detective Farkus of the Lancaster City Police placed a wiretap upon the telephone line of the P & J Cafe in that city. For a period of three days, from 12:30 p.m. until approximately 4:00 p.m., the officer intercepted all telephonic communications coming over the tapped wire, taking notes in long hand of what was said and simultaneously recording the conversations by use of a tape recorder. Immediately after each day's session a typewritten transcript was prepared of the conversations recorded on the tape.

Detective Farkus was the chief witness against defendant. He testified that the tape recordings had been played and replayed until he was satisfied that an accurate verbatim transcript of the recordings had been achieved. During the course of his testimony concerning the taking of race horse bets by defendant, the officer had in his possession and occasionally referred to handwritten notes he had taken while listening to the intercepted telephone conversations. The bulk of his testimony, however, was read

* The statute prohibiting the introduction of evidence secured by wiretap in any court of this Commonwealth was not enacted until July 1957 (Act No. 411, July 16, 1957, 7 Purdon's Pa. Leg. Serv. 1103), subsequent to defendant's trial and conviction, and therefore was not applicable to the present case.

directly into the record from the transcript made from the tape recordings. Although the tape recorder was placed in evidence by the Commonwealth, it was not played to the jury. The officer testified that he knew the defendant but had not previously heard his voice over a telephone; he was positive in his identification of the voice he had heard accepting bets as that of defendant. Two other police officers identified defendant's voice by listening to the tape recordings although neither had listened to the conversations as they had come directly over the wire at the wiretap. One of these latter two witnesses had spoken to defendant on the telephone for a short time about a year before. The defendant did not take the stand and no testimony was offered on his behalf. The sole evidence offered against defendant was that procured by means of the wiretap, but it was sufficient to convince the jury that defendant had in fact accepted race bets as charged in the indictment.

Upon this appeal defendant advances the following arguments which he contends require a reversal of the conviction: (1) that the "best evidence rule" requires that the contents of a recording be proven by the playing of the recording itself and consequently the testimony of Detective Farkus which was read from the typewritten transcript should have been stricken from the record; (2) that there was no evidence of venue, i.e. that defendant was within Lancaster County at the time he allegedly accepted bets on the telephone and that the Lancaster County Court therefore had no jurisdiction; (3) that the conviction cannot stand because it is based solely upon the unauthorized interception and divulgence of telephone conversations in violation of §605 of the Federal Communications Act of June 19, 1934, 48 Stat. 1103, 47 U.S.C.A. §605.

The Superior Court correctly disposed of the defendant's first two contentions upon the basis of well-settled rules of law. As to the first it held, in substance, that the best evidence of the conversations intercepted by means of the wiretap was the testimony of Detective Farkus who had actually heard the conversations as they had occurred; the typewritten transcript was merely used as a means of refreshing the memory of the witness and its use for this purpose was eminently proper in view of the fact that it was prepared under the witness' direct supervision reasonably contemporaneous with the interception of the conversations and the witness testified that he knew it to be accurate: *Commonwealth v. Roth*, 71 Pa. Superior Ct. 71, 73. See also: *Nestor v. George*, 354 Pa. 19, 46 A. 2d 469; *Edwards v. Gimbel*, 202 Pa. 30, 51 A. 357; *Lardieri v. Lamont*, 172 Pa. Superior Ct. 35. On the question of venue, both the Superior Court and the trial court held that there was sufficient evidence of record to establish that defendant was within Lancaster County at the time he committed the offense. The Superior Court also pointed out that this contention was first raised in defendant's additional reasons for a new trial filed more than five months after the verdict. Under these circumstances reliance was properly placed upon the following statement of this Court in *Commonwealth v. Lawrence*, 282 Pa. 128, 133, 127 A. 465: "In the absence of uncontradicted evidence to the contrary, the conviction is conclusive that the crime was committed where it was charged to have been done in the indictment, for the verdict includes such a finding." This has long been the law in this jurisdiction, at least where the defendant has not substantially placed the question of venue in issue: *Commonwealth v. Mull*, 316 Pa. 424, 175 A. 418; *Commonwealth v. Sloat*, 298 Pa. 10, 147 A. 834; *Com-*

*monwealth v. Tarsnane*, 170 Pa. Superior Ct. 265, 85 A. 2d 606. We find no merit in defendant's contention that he made timely objection to venue during the course of an *unrecorded* argument at sidebar in support of his demurrer to the Commonwealth's evidence. It is obvious that defendant made no real attempt to raise the issue of venue in the court below, particularly in view of the fact that he did not even request the court to charge the jury specifically with regard to it, even when invited by the trial judge to point out any deficiencies he felt existed in the charge.

The sole question of any importance raised by the defendant is whether the wiretap evidence upon which his conviction is based should have been ruled inadmissible because it was secured in violation of §605 of the Federal Communications Act of 1934, supra, which prohibits the unauthorized interception and divulgence of telephone conversations. Evidence obtained by wiretapping was specifically held admissible in the courts of this Commonwealth in *Commonwealth v. Chaitt*, 380 Pa. 532, 112 A. 2d 379, where this Court, relying on *Schwartz v. Texas*, 344 U. S. 199, 97 L. ed. 231, 73 S. Ct. 232, ruled that §605 of the federal act is not a bar to the admission of such evidence in the course of a criminal prosecution of a state crime in a state court. Defendant argues, however, that our decision in the *Chaitt* case should now be reconsidered because of a decision of the United States Supreme Court, *Benanti v. United States*, 355 U.S. 96, 2 L. ed. 2d 126, 78 S. Ct. 155, which was decided shortly before the Superior Court affirmed his conviction. In that case wiretap evidence secured in violation of §605 was held inadmissible in a criminal proceeding in a federal court even though the wiretap had been maintained by state officials acting in accordance

with a state statute which specifically authorized wiretapping. The Court further held that the state statute which authorized wiretapping violated the federal statute. However, the Court did not overrule *Schwartz v. Texas*, supra, upon which this Court relied in the *Chaitt* case. The *Schwartz* case was interpreted as holding that even though wiretapping by state officials violates §605, a state rule of evidence allowing the admission of such evidence in state courts would not be overturned.*

There can be no doubt that the United States Supreme Court, in *Benanti v. United States*, invalidated much of the reasoning used by this Court in reaching its result in the *Chaitt* case. It did not, however, overrule *Schwartz v. Texas*, supra, which is the basic authority for this Court's holding that evidence secured by wiretapping is admissible under our rules of evidence which are not governed by statute. It follows that the Superior Court was correct in ruling that the testimony of Detective Farkus was admissible upon the authority of *Commonwealth v. Chaitt*, supra, which constitutes binding precedent upon it as it does, in fact, upon us.

In reaching this conclusion we do not concern ourselves with the social, ethical and philosophical problems to which the practice of wiretapping gives rise. We repeat

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* The Court stated, 2 L. ed. 2d, p. 131: "The rationale of [*Schwartz v. Texas*, supra] is that despite the plain prohibition of §605, due regard to federal-state relations, precluded the conclusion that Congress intended to thwart a state rule of evidence in the absence of a clear indication to that effect. In the instant case we are not dealing with a state rule of evidence. Although state agents committed the wiretap, we are presented with a federal conviction brought about in part by a violation of federal law, in this case in federal court."

now that which we stated, with emphasis, in *Commonwealth v. Chaitt*, supra, p. 535: ". . . *All that we are called upon to decide is in regard to a rule of evidence, namely, whether testimony which in itself is relevant to the determination of a defendant's guilt or innocence should nevertheless be rejected if it was secured in an allegedly improper manner.*"

Such evidence was clearly admissible at the time of defendant's conviction and, since it disclosed that defendant had accepted some eleven bets in violation of the statute, was sufficient in both nature and quality to support the conviction.

The judgment of the Superior Court is affirmed.

Mr. Justice Musmanno files a dissenting opinion.

## APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

No. 242 January Term, 1958

Commonwealth of Pennsylvania

v.

Tony Voci,

Appellant

Appeal from the Judgment of the Superior Court of Pennsylvania at No. 242 October Term, 1957, affirming the Sentence of the Court of Oyer and Terminer and Quarter Sessions of the Peace for the County of Lancaster, June Sessions, 1954, No. 161.

Entered January 21, 1958.

### DISSENTING OPINION

Musmanno, J. Filed: July 1, 1958

The only evidence introduced in this case against the defendant, Tony Voci, was conversation obtained by means of wire-tapping, and, on it, he was convicted of violating the Act of June 24, 1939, prohibiting pool selling and book

making. He appealed to the Superior Court which affirmed the verdict and he then appealed to this Court which has also affirmed the verdict.

Section 605 of the Federal Communications Act provides, inter alia:

> ". . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. . ."

The defendant maintains that under this plainly worded statute, it is illegal and unconstitutional to use in any criminal prosecution evidence obtained by wire-tapping. This Court held in the case of *Commonwealth v. Chaitt*, 380 Pa. 532, that the fact evidence is obtained illegally does not bar its use by the prosecution. Accordingly, the lower Court and the Superior Court approved the verdict against Voci on the authority of the *Chaitt* case.

However, Voci submits that the *Chaitt* case is no longer authority because since it was promulgated in 1955 the Supreme Court of the United States decided in 1957, *Benanti v. United States*, 355 U.S. 96, that wire-tapping evidence obtained by State officers even in accordance with a State statute may still not be used against the accused in a Federal proceeding.

Does the *Chaitt* precedent, therefore, still apply in Pennsylvania? That is the question before us.

This Court says in its Majority Opinion that:

> "There can be no doubt that the United States Supreme Court in Benanti v. United States, invalidated

much of the reasoning used by this Court in reaching its result in the Chaitt case."

If the *Benanti* case invalidated much of the reasoning in *Chaitt*, would that not be enough to invalidate the authority entirely? The Majority does not think so. It says:

> "It follows that the Superior Court was correct in ruling that the testimony of Detective Farkus was admissible upon the authority of Commonwealth v. Chaitt, supra, which constitutes binding precedent upon it as it does, in fact, upon us."

But is *Chaitt* binding upon us? Are we fettered with chains of our own making? If we are, may we not throw them off at our own bidding. If some of the reasoning in *Chaitt* has now, because of the *Benanti* case, become obsolete, and a fresh approach to the whole question shows the remainder of the reasoning to be lacking in substance, what force compels us to adhere to what we mentally and morally condemn?

The tapping of a telephone wire is about as nasty an intrusion into one's private affairs as can be imagined. The venerable Justice Holmes referred to it as a "dirty business." Yet, this Court, with an opportunity to cleanse, fumigate, and purify the law in this respect, insists on retaining wire-tapping with all its admitted muck, mire, and malignity on the argument that the Augean stables do not come within our jurisdiction.

The Majority Opinion supports its position by quoting from the Majority Opinion in the *Chaitt* case. I will avail myself of a similar privilege by quoting from my Dissenting Opinion in that case, namely,

"The Majority of the Court says that it is not concerned with the question of wire-tapping from 'a purely ethical and social standpoint and by its impairment of the right of privacy.' That may be true, but this Court still has to be concerned with the constitutional rights of the defendant. The Majority says that no constitutional right is involved on the supposition that the protections guaranteed by the Fourth Amendment are only of '*material* things.' What is a material thing? Is liberty non-material? Does liberty become material only when wrapped in chains? If liberty means anything it means the right to deal and converse with one's family, friends and the rest of the human race unimpeded and unhampered by officious eavesdroppers. . . . Which is more important? That a horse race gambler should be punished or that the integrity of one's home be protected? That a placer of bets be stopped or that the government not be degraded by trampling on rights of liberty ever sacred to this land?"

I dissented in the *Chaitt* case, I dissent in this case, and I shall continue to dissent until I can feel assured that when I pick up the telephone to speak to a friend, or to anyone with whom conversation is private and sacred, that some Paul-Pry is not listening in, his malicious meddlesomeness being protected by the Supreme Court of Pennsylvania.